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CONCORD, N.H.

Mr. Rao S. Laraba, Secretary
Judicial Council
State House
Concord, New Hampshire

Dear Mr. Laraba:

Yesterday you requested the opinion of this office as to whether any of the courts of this State had the power to commit a person to the Laconia State School without first referring such person to the Mental Hygiene Clinic for study, report and recommendation. This morning I called Mr. Hungerford, Superintendent of the Laconia State School, and asked him whether he had at any time received persons into the School who had been committed by any court of this State without having first been referred to the Mental Hygiene Clinic. Apparently this question had already come to his attention as he stated that he was already in the process of checking his records on that point. He further stated, however, that he could not give me an answer at the present time and would not be able to do so until he had finished a complete check of his files. He was unable to say when this would be completed and an answer forthcoming but said that it definitely would not be today.

Under the provisions of RSA 171:13 (supp) it is clear that the Probate Courts cannot commit a person to the School without first referring him to the Clinic for the aforesaid study and report. Under the provisions of RSA 171:17 (supp) it is also clear that Municipal Courts acting under the provisions of RSA 169:18 in the case of a neglected or delinquent child cannot commit to the School without first referring the child to the Clinic.

However, it would appear that the Superior Court in any criminal case or in a case involving the examination of a sexual psychopath as provided by RSA 173:4 may commit a person to the School without first referring him to the Clinic. See RSA 171:18 (supp). The wording of this latter statute as to referring the person to the Clinic is discretionary. In other words, the Superior Court may refer such person to the Clinic if it sees fit to do so but in its discretion may commit him to the Laconia State School without such reference. I

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Mr. Rae S. Laraba, Secretary

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have not had the time to make a check with the Clerks of the Superior Court to determine whether the Superior Courts usually refer persons to the Clinic in such cases before committing to the School, but I feel almost certain that they do so in practically all cases and that a commitment to the School by the Superior Court without the preliminary reference to the Clinic would represent the exception rather than the rule.

Sincerely yours,

John J. Zimmerman
Assistant Attorney General

JJZ/lt